

WEDNESDAY, JULY 1, 1998

Crim. THE PEOPLE
No. v.
C026593 JERRY BRENTON NUTT
BY THE COURT:

Appellant's petition for rehearing and motion for supplemental briefing are granted, and the decision filed on June 4, 1998, is vacated.

It is ordered that the parties file supplemental letter briefs in response to the following questions:

1. Is the question of the court's abuse of discretion in denying appellant's motion to strike defendant's prior serious felony convictions cognizable on appeal?
(See *People v. Benevides* (1998) 64 Cal. App. 4th 728)

2. Assuming the issue is cognizable, was there an abuse of discretion?

Appellant's letter brief shall be filed with the court on or before July 21, 1998.

Respondent's letter brief shall be filed on or before August 10, 1998

July 1, 1998

PUGLIA, P.J.

WEDNESDAY, JULY 1, 1998 CONTINUED

Civil EUGENE R. CRIPPA ET AL.
No. v.
C028052 DEPARTMENT OF FISH AND GAME ET AL.
BY THE COURT:

Pursuant to written request of appellants, the appeal filed November 14, 1997, is dismissed. It is further ordered that the remittitur issue forthwith. (See Cal. Rules of Court, rule 19 (b).)

Dated: July 1, 1998

BLEASE, Acting P.J.

Crim. THE PEOPLE (Not for Publication)
No. v.
C025314 DAVID CLARK MCKENZIE

The judgment is modified to grant defendant presentence custody credits from August 20, 1996, through November 4, 1996, a period of 77 days actual custody plus 38 days of conduct credit, for a total of 115 days. As modified, the judgment is affirmed. The trial court is directed to prepare an amended abstract of judgment reflecting this modification, and to forward a copy thereof to the Department of Corrections.

SCOTLAND, J.

We concur: BLEASE, Acting P.J.
 NICHOLSON, J.

Juvenile In re RON R., A person coming under the Juvenile Court Law.
No. THE PEOPLE
C025337 v.
 RON R.

The judgment (order committing the minor to the Youth Authority) is affirmed.

SIMS, Acting P.J.

We concur: NICHOLSON, J.
 RAYE, J

WEDNESDAY, JULY 1, 1998 CONTINUED

Civil ALAN RAY KINMAN (Not for Publication)
No. v.
C027383 DIANA DICKSON-KINMAN

The judgment (order dismissing the petition) is affirmed.
Respondent shall receive her costs on appeal.

SIMS, Acting P.J.

We concur: NICHOLSON, J.
 HULL, J.

THURSDAY, JULY 2, 1998

Civil RAY HAMMAN
No. v.
C028014 CYNTHIA HAUSENFLECK
BY THE COURT:

Pursuant to the written stipulation of counsel, the appeal filed on
October 21, 1997, is dismissed. It is further ordered pursuant to said
stipulation that the remittitur issue forthwith.

Dated: July 2, 1998

BLEASE, Acting P.J.

Civil TINA DIPIERRO (Not for Publication)
No. v.
C027727 SHADOW GLEN RIDING STABLES

The judgment is affirmed.

DAVIS, J.

We concur: SIMS, Acting P.J.
 NICHOLSON, J

Crim. THE PEOPLE (Not for Publication)
No. v.
C026280 ARTHUR EUGENE JOHNSON

The judgment is affirmed.

DAVIS, J.

I concur:
 PUGLIA, P.J.
I concur in the result.
 RAYE, J.

MONDAY, JULY 6, 1998

Crim. No. C027555	THE PEOPLE v. JIMMY DOYLE NEWTON	(Not for Publication)
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The judgment is affirmed.

HULL, J.

We concur: PUGLIA, P.J.
 RAYE, J.

Crim. No. C027842	THE PEOPLE v. WILLIAM JAMES HADLEY, JR.	(Not for Publication)
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The judgment is modified to impose a \$200 restitution fine and an additional \$200 restitution fine stayed pending successful completion of parole. As so modified, the judgment is affirmed. The trial court is directed to prepare an amended abstract of judgment and to forward a certified copy to the Department of Corrections.

HULL,

We concur: PUGLIA, P.J.
 RAYE, J.

Crim. No. C026920	THE PEOPLE v. SAMUEL RODRIGUEZ	(Not for Publication)
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The judgment is affirmed.

HULL, J.

We concur: DAVIS, Acting P.J.
 NICHOLSON, J .

MONDAY, JULY 6, 1998 CONTINUED

Civil ROBERT F. LEE (Not for Publication)
No. v.
C023520 FAIR OAKS CEMETERY DISTRICT

The judgment as to liability is affirmed. Within 30 days from the filing of this decision plaintiff Lee may file an election to accept a reduced judgment of \$45, 000. If plaintiff files the election, the judgment so reduced shall stand affirmed. If plaintiff fails to file such an election, the clerk's remittitur shall order a reversal of the judgment and remand to the trial court with directions to retry the proper measure of damages for breach of contract. Following such a retrial, the trial court shall enter judgment for either (1) \$45,000 or (2) the damage figure for breach of contract as found by the trier of fact, whichever sum is greater.

The parties shall bear their own costs on appeal.

CALLAHAN, J.

We concur: SIMS, Acting P.J.
 RAYE, J.

TUESDAY, JULY 7, 1998

Juvenile In re ERNEST R., A person coming under the Juvenile Court Law.
No. THE PEOPLE (CERTIFIED FOR PUBLICATION)
C026702 v.
 ERNEST R.

The judgment (order committing the minor to the Youth Authority) is affirmed.

(CERTIFIED FOR PUBLICATION)

SIMS, J.

We concur: PUGLIA, P.J.
 CALLAHAN, J.

Juvenile In re ANGELA L. ET AL., Persons coming under the Juvenile Court Law
No. SACRAMENTO COUNTY DEPARTMENT OF HEALTH AND HUMAN
C028400 SERVICES (Not for Publication)
 v.
 NANCY D.

The order terminating appellant's parental rights is affirmed.

HULL, J.

We concur: PUGLIA, P.J.
 RAYE, J.

TUESDAY, JULY 7, 1998 CONTINUED

Civil
No.
C026492

In re the Marriage of JANINE M. and TIMOTHY A. SHEAFFER
JANINE MOLGAARD SHEAFFER
v. (Not for Publication)
TIMOTHY ABRAM SHEAFFER

The orders imposing sanction is reversed; with that exception the orders from which Scheaffer appeals are affirmed. Molgaard shall recover her costs of this appeal. We imply no view on the issue of an award of attorney's fees.

BLEASE, Acting P.J.

We concur: DAVIS, J.
 SCOTLAND, J.

Civil
No.
C026622

In re the Marriage of RONALD J. and KATHERINE R. BAKER
RONALD R. BAKER ((Not for Publication))
v.
KATHERINE R. BAKER

The order denying modification and awarding attorney's fees is affirmed. Wife shall recover her costs of this appeal. We imply no view on the issue of an award of attorney's fees vel non in the trial court.

BLEASE, Acting P.J.

We concur: DAVIS, J.
 SCOTLAND, J.

Crim.
No.
C027436

THE PEOPLE (Not for Publication)
v.
JOHN WILLIAM RODENBORN

The judgment is modified to stay service of the 60-day sentence imposed for battery. As modified, the judgment is affirmed. The trial court is directed to prepare an amended abstract of judgment and to forward a copy of the same to the Department of Corrections.

PUGLIA, P.J.

We concur: BLEASE, J.
 DAVIS, J.

TUESDAY, JULY 7, 1998 CONTINUED

Juvenile GENEVA U. (Not for Publication)
No. v.
C029376 SUPERIOR COURT OF YUBA COUNTY
YUBA COUNTY DEPARTMENT OF HEALTH AND HUMAN
SERVICES et al.

The petition and request for a stay are denied.

PUGLIA, P.J.

We concur: RAYE, J.
 HULL, J.

WEDNESDAY, JULY 8, 1998

MISC-ORDER

98-08 By the Court:

Associate Justice Coleman A. Blease is appointed to serve as Acting Presiding Justice to discharge the duties described in Rules 75, 76, 77 and 78 of the California Rules of Court during the absence of the Presiding Justice from the Court for the period of July 20, 1998, through July 27, 1998, or until his return. (See Cal. Const. Art 6, Sec. 3.) The senior member of a panel of the Court is designated the Acting Presiding Justice of that panel during the absence of the Presiding Justice.

Dated: July 8, 1998

PUGLIA, P.J.

Civil HAROLD WAGNER ET AL.
No. v.
C027459 STANLEY TACHEIRA ET AL.
BY THE COURT:

Appellants' petition for rehearing is denied.

Dated: July 8, 1998

PUGLIA, P.J.

WEDNESDAY, JULY 8, 1998

Civil MARRIAGE OD DIANA L. QUILICI AND GARRETT BURKHART
No. DIANA L. QUILICI
C027807 v.

 GARRETT BURKHART
Civil DIANA LYNNE QUILICI
No. v.
C029718 GARRETT ROY BURKHART
BY THE COURT:

On the court's own motion, the above cases are consolidated. The cases are ordered consolidated for all further appellate procedures except that they will retain their respective case numbers. Whenever documents are submitted for filing by the parties, an original must be presented or each case number; however, if copies of documents are required pursuant to the California Rules of Court, the parties need only submit a maximum of four. The cases will be considered for decision together.

Appellant's combined opening brief is due to be served and filed 30 days from the filing of the record on appeal in C029718.

Dated: July 8, 1998

PUGLIA, P.J.

Crim. THE PEOPLE (Not for Publication)
No. v.
C027094 JUNE ELAINE LONG

The restitution order is modified to reflect that item numbers 50, 75, 110, 114 and 117 belong to defendant. The judgment is otherwise affirmed.
NICHOLSON, J.

We concur: PUGLIA, P.J.
 RAYE, J.

Juvenile In re FREDERICK W., A person coming under the Juvenile Court Law.
No. THE PEOPLE (Not for Publication)
C027887 v.
 FREDERICK W.

The judgment is affirmed.

NICHOLSON, J.

We concur: PUGLIA, P.J.
 RAYE , J.

WEDNESDAY, JULY 8, 1998 CONTINUED

Crim. No. C027829	THE PEOPLE v. WILLIAM HULSEY	(Not for Publication)
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The judgment is modified in the following respects. The order to establish a payment schedule is stricken insofar as it relates to a section 1202.45 fine. A \$200 restitution fine is imposed pursuant to section 1202.4. As so modified, the judgment is affirmed. The trial court is directed to prepare an amended abstract of judgment and to forward a certified copy to the Department of Corrections.

HULL, J.

We concur: PUGLIA, P.J.
 RAYE, J.

Civil No. C024045	MONIQUE ETCHEVERRY ET AL. v. TRI-AG SERVICE, INC. ET AL.	(CERTIFIED FOR PUBLICATION)
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The judgment is reversed. Etcheverry shall recover the costs of this appeal. (CERTIFIED FOR PUBLICATION)

BLEASE, Acting P.J.

I concur: MORRISON, J.

I respectfully disagree with my colleagues concerning federal preemption in this case...I would hold the FIFRA preempts state causes of action based on a duty to warn different from or in addition to those approved by the EPA. Accordingly, I would affirm. (CERTIFIED OF PUBLICATION)

NICHOLSON, J.

Juvenile No. C026914	In re DETHDOUANGCHAI S., A person coming under the Juvenile Court Law. v. DETHDOUANGCHAI S.
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Count III of the petition is reversed and dismissed. The juvenile court is directed to amend its records accordingly. As modified, the judgment is affirmed.

SIMS, J.

We concur: PUGLIA, P.J.
 NICHOLSON, J.

THURSDAY, JULY 9, 1998

Crim. THE PEOPLE (Not for Publication)
No. v.
C024516 WILLIAM OMER BOWEN

The judgment is affirmed.

RAYE, J.

We concur: SIMS, Acting P.J.
 CALLAHAN, J.

Civil ROBIN STRIEBEL (Not for Publication)
No. v.
C027324 TEX TAN WESTERN LEATHER COMPANY

The judgment is affirmed.

BLEASE, Acting P.J.

We concur: SCOTLAND, J.
 NICHOLSON, J.

Juvenile In re DAVID G., a person Coming Under the Juvenile Court Law.
No. THE PEOPLE (Not for Publication)
C027081 v.
 DAVID G.

The judgment is affirmed.

SIMS, J.

We concur: BLEASE, Acting P.J.
 CALLAHAN, J.

Crim. THE PEOPLE (Not for Publication)
No. v.
C027971 NICK CARLOS ZEPEDA

The judgment is affirmed.

SIMS, J.

We concur: BLEASE, Acting P.J.
 MORRISON, J.

Civil BERNASCONI COMMERCIAL REAL ESTATE ET AL.
No. v. (Not for Publication)
C027773 ST. JOSEPH'S OMNI PREFERRED CARE INC.

The judgment is affirmed.

SIMS, Acting P.J.

We concur: SCOTLAND, J.
 MORRISON, J.

THURSDAY, JULY 9, 1998 CONTINUED

Crim. THE PEOPLE (Not for Publication)
 No. v.
 C027561 KENT LAWRENCE MARTINEZ
 The judgment is affirmed.
 DAVIS, J.
 We concur: PUGLIA, P.J.
 BLEASE, J.

Civil DEAN LAGOE (Not for Publication)
 No. v.
 C025876 MCLAUGHLIN FORD SALE ET AL.
 Because plaintiff's notice of appeal was not timely filed, we have no
 jurisdiction to hear his appeal. The appeal is therefore dismissed.
 HULL, J.
 We concur: PUGLIA, P.J.
 DAVIS, J.

FRIDAY, JULY 10, 1998

Crim. THE PEOPLE (Not for Publication)
 No. v.
 C028015 RANDALL RAY ODAM
 The judgment is affirmed.
 SIMS, J.
 We concur: BLEASE, Acting P.J.
 MORRISON, J.

Crim. THE PEOPLE (Not for Publication)
 No. v.
 C024012 WILLIAM CHARLES ABRAHAM, JR.
 The convictions on counts I and II are affirmed. The sentence is
 vacated and the matter remanded for further proceedings on the prior
 conviction allegations.
 BLEASE, Acting P.J.
 We concur: MORRISON, J.
 CALLAHAN, J.

FRIDAY, JULY 10, 1998 CONTINUED

Crim. THE PEOPLE (Not for Publication)
 No. v.
 C023795 JAVIER VILLALOVOS

Defendant's conviction for violating Penal Code section 114 is reversed, and the consecutive term of one year and eight months imposed by the trial court for that conviction is stricken, leaving an aggregate term of fifteen years and eight months. In all other respects, the judgment is affirmed. The trial court is directed to prepare an amended abstract of judgment consistent with this opinion and to send a copy of the amended abstract to the Department of Corrections.

SCOTLAND, J.

We concur: PUGLIA, P.J.
 SIMS, J.

MONDAY, JULY 13 1998

Crim. THE PEOPLE (Not for Publication)
 No. v.
 C028430 DANIEL JAMES CONTRERAS

The judgment is affirmed.

BLEASE, Acting P.J.

We concur: DAVIS, J.
 RAYE, J.

Crim. THE PEOPLE (Not for Publication)
 No. v.
 C026031 STEVEN HODGE

The judgment is affirmed.

BLEASE, J.

We concur: PUGLIA, P.J.
 DAVIS, J.

Crim. THE PEOPLE (Not for Publication)
 No. v.
 C026695 THEODORE JOSE SANDOVAL

The judgment is affirmed.

NICHOLSON, J.

We concur: BLEASE, Acting P.J.
 CALLAHAN, J.

MONDAY, JULY 13, 1998 CONTINUED

Crim. THE PEOPLE (Not for Publication)

No. v.

C027538 GERARD JOSEPH GALLANT

The judgment is affirmed.

HULL, J.

We concur: PUGLIA, P.J.
RAYE, J.

Juvenile In re JEREMY G., A person coming under the Juvenile Court Law.

No. THE PEOPLE (Certified for Publication)

C028422 v.

JEREMY G.

The juvenile court's order granting the minor's suppression motion is reversed. The petition of October 22, 1997, is ordered reinstated and the matter is remanded to the juvenile court for further proceedings.

(CERTIFIED FOR PUBLICATION)

NICHOLSON, J.

We concur: PUGLIA, P.J.
RAYE, J.

TUESDAY, JULY 14, 1998

Civil RUTH MACDOUGALL ET AL.

No. v.

C024798 THOMAS J. PERRY

BY THE COURT:

Appellants' petition for rehearing is denied.

Dated: July 14, 1998

PUGLIA, P.J.

TUESDAY, JULY 14, 19998 CONTINUED

Juvenile In re DARION S., A person coming under the Juvenile Court Law.
No. SOCIAL SERVICES DEPARTMENT
C028797 v.

TAWNYA D.
SOCIAL SERVICES DEPARTMENT

No. v.
C029358 TAWNYA D.
BY THE COURT:

The motion of appellant for consolidation of the above case is granted. The cases are ordered consolidated for all further appellate procedures except that they will retain their respective case numbers. Whenever documents are submitted for filing by the parties, an original must be presented for each case number; however, if copies of documents are required pursuant to the California Rules of Court, the parties need only submit a maximum of four. The cases will be considered for decision together.

Appellant's combined opening brief was due on or before July 13, 1998.

Dated: July 14, 1998

BLEASE, Acting P.J.

Civil In re the MARRIAGE OF JOANN AND JAMES E. WALSH
No. JOANN WALSH (Not for Publication)
C027376 v.

JAMES E. WALSH
The appeal is dismissed.

DAVIS, Acting P.J.

We concur: SCOTLAND, J.
CALLAHAN, J.

Civil BOB COOK et al. (Not for Publication)
C025837 v.

JERRY GLASS
The order awarding sanctions and the judgment are affirmed.
RAYE, J.

We concur: PUGLIA, P.J.
CALLAHAN, J.

TUESDAY, JULY 14, 19998 CONTINUED

Crim. THE PEOPLE (Not for Publication)
 No. v.
 C026397 EDWARD RAY MCWAYNE
 The judgment is affirmed.
 RAYE, J.
 We concur: PUGLIA, P.J.
 HULL, J.

Crim. THE PEOPLE (Not for publication)
 No. v.
 C027586 MICHAEL GEORGE CANT
 The judgment is affirmed.
 RAYE, J.
 We concur: PUGLIA, P.J.
 DAVIS, J.

Juvenile In re MICHAEL S., A person coming under the Juvenile Court Law.
 No. THE PEOPLE (Not for publication)
 C026933 v.
 MICHAEL S.
 The judgment is affirmed.
 RAYE, J.
 We concur: PUGLIA, P.J.
 DAVIS, J.

Crim. THE PEOPLE (Not for Publication)
 No. v.
 C027625 ALFONSO ARAUSA BRAVO
 The clerk of the trial court is directed to correct the minutes and the abstract of judgment to reflect the correct count and code section to which defendant entered his plea and to forward a copy of the corrected abstract of judgment to the Department of Corrections.
 DAVIS, J.
 We concur: BLEASE, Acting P.J.
 RAYE, J.

TUESDAY, JULY 14, 1998 CONTINUED

Civil
No.
C023685

ESTATE OF DANIEL R. KELLY, DECEASED
GERTRUD H. ZELLER, AS EXECUTOR, ETC.

v.

CREDIT BUREAU OF PLACER, ETC., ET AL.

The judgment (order) is reversed. Appellant shall recover her costs on appeal.

RAYE, J.

We concur: PUGLIA, P.J.
 NICHOLSON, J.

Crim.
No.
C027861

THE PEOPLE (Not for Publication)

v.

GREGORY VIRGIL ROSS

The judgment is affirmed. The matter is remanded to the trial court with direction to recalculate defendant's presentence custody credits, to amend the abstract of judgment accordingly and to forward a copy of the amended abstract to the Department of Corrections.

HULL, J.

We concur: PUGLIA, P.J.
 RAYE, J.

WEDNESDAY, JULY 15, 1998

Crim.
No.
C028027

THE PEOPLE (Not for Publication)

v.

BOB JAMES BOWMAN

The judgment is affirmed.

CALLAHAN, J.

We concur: BLEASE, Acting P.J.
 NICHOLSON, J.